

HB2328



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2328

by Rep. André Thapedi

SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.8

Amends the Hospital Licensing Act. Provides that employment agreements between hospitals and physicians may not contain any provision to restrict the ability of a physician to leave employment with the hospital or hospital affiliate and immediately continue to practice in the same field of medicine in the same geographic area.

LRB101 04960 CPF 49969 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Hospital Licensing Act is amended by
5 changing Section 10.8 as follows:

6 (210 ILCS 85/10.8)

7 Sec. 10.8. Requirements for employment of physicians.

8 (a) Physician employment by hospitals and hospital
9 affiliates. Employing entities may employ physicians to
10 practice medicine in all of its branches provided that the
11 following requirements are met:

12 (1) The employed physician is a member of the medical
13 staff of either the hospital or hospital affiliate. If a
14 hospital affiliate decides to have a medical staff, its
15 medical staff shall be organized in accordance with written
16 bylaws where the affiliate medical staff is responsible for
17 making recommendations to the governing body of the
18 affiliate regarding all quality assurance activities and
19 safeguarding professional autonomy. The affiliate medical
20 staff bylaws may not be unilaterally changed by the
21 governing body of the affiliate. Nothing in this Section
22 requires hospital affiliates to have a medical staff.

23 (2) Independent physicians, who are not employed by an

1 employing entity, periodically review the quality of the
2 medical services provided by the employed physician to
3 continuously improve patient care.

4 (3) The employing entity and the employed physician
5 sign a statement acknowledging that the employer shall not
6 unreasonably exercise control, direct, or interfere with
7 the employed physician's exercise and execution of his or
8 her professional judgment in a manner that adversely
9 affects the employed physician's ability to provide
10 quality care to patients. This signed statement shall take
11 the form of a provision in the physician's employment
12 contract or a separate signed document from the employing
13 entity to the employed physician. This statement shall
14 state: "As the employer of a physician, (employer's name)
15 shall not unreasonably exercise control, direct, or
16 interfere with the employed physician's exercise and
17 execution of his or her professional judgment in a manner
18 that adversely affects the employed physician's ability to
19 provide quality care to patients." The employment
20 agreement may not contain any provision to restrict the
21 ability of a physician to leave employment with the
22 hospital or hospital affiliate and immediately continue to
23 practice in the same field of medicine in the same
24 geographic area, often referred to as restrictive
25 covenants or non-compete clauses.

26 (4) The employing entity shall establish a mutually

1 agreed upon independent review process with criteria under
2 which an employed physician may seek review of the alleged
3 violation of this Section by physicians who are not
4 employed by the employing entity. The affiliate may arrange
5 with the hospital medical staff to conduct these reviews.
6 The independent physicians shall make findings and
7 recommendations to the employing entity and the employed
8 physician within 30 days of the conclusion of the gathering
9 of the relevant information.

10 (b) Definitions. For the purpose of this Section:

11 "Employing entity" means a hospital licensed under the
12 Hospital Licensing Act or a hospital affiliate.

13 "Employed physician" means a physician who receives an IRS
14 W-2 form, or any successor federal income tax form, from an
15 employing entity.

16 "Hospital" means a hospital licensed under the Hospital
17 Licensing Act, except county hospitals as defined in subsection
18 (c) of Section 15-1 of the Illinois Public Aid Code.

19 "Hospital affiliate" means a corporation, partnership,
20 joint venture, limited liability company, or similar
21 organization, other than a hospital, that is devoted primarily
22 to the provision, management, or support of health care
23 services and that directly or indirectly controls, is
24 controlled by, or is under common control of the hospital.

25 "Control" means having at least an equal or a majority
26 ownership or membership interest. A hospital affiliate shall be

1 100% owned or controlled by any combination of hospitals, their
2 parent corporations, or physicians licensed to practice
3 medicine in all its branches in Illinois. "Hospital affiliate"
4 does not include a health maintenance organization regulated
5 under the Health Maintenance Organization Act.

6 "Physician" means an individual licensed to practice
7 medicine in all its branches in Illinois.

8 "Professional judgment" means the exercise of a
9 physician's independent clinical judgment in providing
10 medically appropriate diagnoses, care, and treatment to a
11 particular patient at a particular time. Situations in which an
12 employing entity does not interfere with an employed
13 physician's professional judgment include, without limitation,
14 the following:

15 (1) practice restrictions based upon peer review of the
16 physician's clinical practice to assess quality of care and
17 utilization of resources in accordance with applicable
18 bylaws;

19 (2) supervision of physicians by appropriately
20 licensed medical directors, medical school faculty,
21 department chairpersons or directors, or supervising
22 physicians;

23 (3) written statements of ethical or religious
24 directives; and

25 (4) reasonable referral restrictions that do not, in
26 the reasonable professional judgment of the physician,

1 adversely affect the health or welfare of the patient.

2 (c) Private enforcement. An employed physician aggrieved
3 by a violation of this Act may seek to obtain an injunction or
4 reinstatement of employment with the employing entity as the
5 court may deem appropriate. Nothing in this Section limits or
6 abrogates any common law cause of action. Nothing in this
7 Section shall be deemed to alter the law of negligence.

8 (d) Department enforcement. The Department may enforce the
9 provisions of this Section, but nothing in this Section shall
10 require or permit the Department to license, certify, or
11 otherwise investigate the activities of a hospital affiliate
12 not otherwise required to be licensed by the Department.

13 (e) Retaliation prohibited. No employing entity shall
14 retaliate against any employed physician for requesting a
15 hearing or review under this Section. No action may be taken
16 that affects the ability of a physician to practice during this
17 review, except in circumstances where the medical staff bylaws
18 authorize summary suspension.

19 (f) Physician collaboration. No employing entity shall
20 adopt or enforce, either formally or informally, any policy,
21 rule, regulation, or practice inconsistent with the provision
22 of adequate collaboration, including medical direction of
23 licensed advanced practice registered nurses or supervision of
24 licensed physician assistants and delegation to other
25 personnel under Section 54.5 of the Medical Practice Act of
26 1987.

1 (g) Physician disciplinary actions. Nothing in this
2 Section shall be construed to limit or prohibit the governing
3 body of an employing entity or its medical staff, if any, from
4 taking disciplinary actions against a physician as permitted by
5 law.

6 (h) Physician review. Nothing in this Section shall be
7 construed to prohibit a hospital or hospital affiliate from
8 making a determination not to pay for a particular health care
9 service or to prohibit a medical group, independent practice
10 association, hospital medical staff, or hospital governing
11 body from enforcing reasonable peer review or utilization
12 review protocols or determining whether the employed physician
13 complied with those protocols.

14 (i) Review. Nothing in this Section may be used or
15 construed to establish that any activity of a hospital or
16 hospital affiliate is subject to review under the Illinois
17 Health Facilities Planning Act.

18 (j) Rules. The Department shall adopt any rules necessary
19 to implement this Section.

20 (Source: P.A. 100-201, eff. 8-18-17; 100-513, eff. 1-1-18.)